

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZO SKIN HEALTH, INC., a California
corporation,

Plaintiff,

vs.

LEI's Cosmetic, Inc., a California corporation,

Defendant.

8:22CV163

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE**

This case is before the Court on the October 13, 2022, Order to Show Cause by Magistrate Judge Michael D. Nelson, [Filing 12](#), and the October 24, 2022, Motion to Set Aside Entry of Default and for Leave to File a Responsive Pleading by defendant LEI's Cosmetics, Inc., [Filing 13](#). Judge Nelson entered his Order to Show Cause because plaintiff ZO Skin had obtained the Clerk's entry of default against defendant LEI's Cosmetics on July 22, 2025, [Filing 8](#), but ZO Skin had taken no further action in this case since then, [Filing 12 at 1](#). Consequently, Judge Nelson ordered that, on or before October 27, 2022, plaintiff was required to show cause why this case should not be dismissed for failure to prosecute or take some other appropriate action. [Filing 12 at 1](#). Judge Nelson explained that ZO Skin's failure to take such action would result in dismissal of this action. [Filing 12 at 1](#).

On October 24, 2022, defendant LEI's Cosmetics filed its Motion to set aside the Clerk's entry of default. However, plaintiff ZO Skin has still taken no further action in this case by the

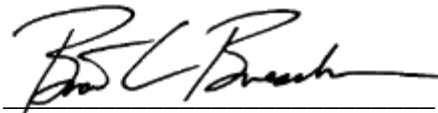
deadline set out in Judge Nelson’s Order to Show Cause. Thus, this case may be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and NECivR [41.2](#). Rule 41(b) of the Federal Rules of Civil Procedure provides that—except in circumstances not present here—a dismissal pursuant to an order for involuntary dismissal for lack of prosecution “operates as an adjudication on the merits.” [Fed. R. Civ. P. 41\(b\)](#). Thus, the dismissal is with prejudice. Dismissal with prejudice for lack of prosecution necessarily moots defendant LEI’s Cosmetics’s Motion to Set Aside Entry of Default. Accordingly,

IT IS ORDERED that

1. this action in its entirety is dismissed with prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, NECivR [41.2](#), and the October 13, 2022, Show Cause Order, [Filing 12](#); and
2. the October 24, 2022, Motion to Set Aside Entry of Default and for Leave to File a Responsive Pleading by defendant LEI’s Cosmetics, Inc., [Filing 13](#), is denied as moots.

Dated this 28th day of October, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'B. C. Buescher', written over a horizontal line.

Brian C. Buescher
United States District Judge